governmental and police power for all purposes for two miles beyond. *Held*, that both provisions violate the clause of the state constitution which prohibits deprivation of liberty without due process of law. *Malone* v. *Williams*, 103 S. W. 798 (Tenn.).

It is clear that two distinct municipal corporations cannot exercise the same power at the same time within the same territories. *Taylor* v. *Fort Wayne*, 47 Ind. 274, 281. But the state as sovereign may within proper limits delegate its power to a municipality, and when such a delegation is in conflict with a former grant the latter is impliedly revoked. See *Patterson* v. *Society*, 4 Zab. (N. J.) 385, 399. Such extension of jurisdiction has been most frequent for the purpose of regulating liquor traffic, and has been upheld for such purpose to the extent of four miles. *Jordan* v. *Evansville*, 163 Ind. 512. The power thus delegated must, however, have reference to the welfare of such municipality. *Falmouth* v. *Watson*, 5 Bush (Ky.) 660. Moreover, the delegation to a municipality of any unreasonable or oppressive power over those outside its limits, who have no voice in the corporate affairs, must be regarded with apprehension as a deprivation of liberty without due process of law. It is clear that while such extension of power might be proper in the case of a large city surrounded by sparsely settled country, it would be unjustifiable where two populous cities were contiguous. And the decision in the present case declaring the proposed grant unreasonable seems sound.

PATENTS — INFRINGEMENT — CONTRIBUTORY INFRINGEMENT. — The patentee of a talking-machine had no patent on the sound-producing records used with the machine. The defendant manufactured and sold records solely for the use of purchasers of the talking-machines. *Held*, that the sale of the records may be enjoined. *Leeds & Catlin Co.* v. *Victor Talking Machine Co.*, 154 Fed. 58 (C. C. A., Second Circ.).

The doctrine of contributory infringement usually prohibits the sale of unpatented parts of a patented combination, or unpatented articles which are of value only when used in combination with the patented article. *Thomson-Houston Electric Co.* v. *Kelsey, etc., Co.*, 75 Fed. 1005. The result, as pointed out by the dissenting opinion, is the creation of a monopoly of an unpatented article. But purchasers of patented articles have the right of repair and supply, and it is therefore held that the sale to them of short-lived incidental articles cannot be enjoined. *Morgan Envelope Co.* v. *Albany, etc., Co.*, 152 U. S. 425. In the present case the court bases its decision on the permanent nature of the records. The better test seems to be that of the practical comparative permanency of the patented and the unpatented article. See *Morgan Envelope Co.* v. *Albany, etc., Co.*, *supra*, 433. Records of a talking-machine do not wear out quickly, and are therefore permanent in that sense, but not in another, since in practice they are periodically renewed. The case seems doubtful, therefore, even granting the soundness of enlarging the monopoly of the patent in the case of truly permanent auxiliary articles. *Cf. Wilson* v. *Simpson*, 9 How. (U. S.) 109.

POST-OFFICE — POWER TO WITHHOLD MAIL PENDING INVESTIGATION OF FRAUD CHARGES. — The Postmaster-General issued an order withholding the complainant's mail for six weeks, pending the investigation of a charge of fraud. *Held*, that he is exceeding his power. *Donnell Mfg. Co.* v. *Wyman*, 4 The Law 807 (Circ. Ct., E. D. Mo., Sept. 2, 1907).

This case seems the first to define the powers of the Postmaster-General in this matter. He is authorized on evidence of the addressee's fraud, "satisfactory to him," to order mail returned. U. S. COMP. STAT. 1901, § 3929. But it is questionable if he may withhold mail even for a limited time, before he is satisfied of fraud. It may be urged, on the one hand, that the statutory grant of power includes authority to do whatever is necessary to make effectual the object of the grant. See *Mayor* v. *Sands*, 105 N. Y. 210, 218. And, as the object is to prevent fraudulent use of the mails, not to imply the power would to a degree defeat the object of the statute, for the addressee, pending an investigation, would reap the benefit of his fraud. On the other hand, it may be argued that whenever a statute gives a right and names a remedy, it impliedly

excludes all other remedies. BISHOP, WRITTEN LAW, § 249. The legislative intention was indeed to prevent fraudulent use of the mails, but only in a specified way; that is, by returning the mail *after* the Postmaster-General is satisfied of fraud. *New Orleans Nat'l Bank* v. *Merchant*, 18 Fed. 841. But even if the power may be implied, its exercise in the present case is excessive.

QUASI-CONTRACTS — NATURE AND SCOPE OF THE OBLIGATION — RECOVERY UNDER ILLEGAL CONTRACT. — The plaintiff agreed to construct a hotel according to plans which called for a roof of a pitch forbidden by statute. Before any work was done on the roof, the plaintiff disaffirmed the contract and sued for the value of the work and materials furnished for the lower part of the hotel. *Held*, that the plaintiff may recover. *Eastern Expanded Metal Co.* v. *Webb Granite and Construction Co.*, 81 N. E. 251 (Mass.). See NOTES, p. 137.

WILLS — CONSTRUCTION — RIGHTS OF RESIDUARY LEGATEE AND NEXT OF KIN. — A fund was left to C for life, with power of appointment by will. C died without exercising the power. *Held*, that the fund goes to the next of kin of the original testator, and not to his residuary legatee. *Walton* v. *Walton*, 67 Atl. 397 (N. J., Ct. of Ch.).

The law is opposed to any construction of a will that produces partial intestacy. *Kenaday* v. *Sinnott*, 179 U. S 606. The distinction formerly drawn that lapsed or void devises went to the heirs as intestate estate, though similarly unenforceable bequests of personalty fell into the residuum, has been abandoned. *Freme* v. *Clement*, 18 Ch. D. 499; *Molineaux* v. *Raynolds*, 55 N. J. Eq. 187. And the rule has always been practically universal that not only lapsed or void legacies, but also all interests in personal property not specifically disposed of by will, go to the residuary legatee. *In re Bagot*, [1893] 3 Ch. 348; *Riker* v. *Cornwell*, 113 N. Y. 115. In view of these authorities no satisfactory reason is seen to justify the construction of the present case that the reversionary interest of the testator, although subject to C's power of appointment, is not included in the residuary clause. Regarded solely as a question of the testator's intention, the construction of intestacy is possible. The case, therefore, disregards well-settled rules of construction to give effect to the court's opinion of what the testator intended to convey by the residuary clause.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

TERMINABLE DEDICATION BY LESSEE FOR YEARS; ESCHEAT AND THE DOCTRINE OF BONA VACANTIA — A recent article, suggested by a dictum in a late English case, discusses the validity of an attempted dedication by a lessee for years within the limits of his term. *Dedication of Land to Public Use by Lessees for Years*. Anon., 51 Sol. J. 509 (June 1, 1907). As the writer correctly states, no English case — and we might add, no American case — decides the question squarely, but the dictum, in accord with a statement in an earlier case,[1] is to the effect that the lessee cannot give his term to the public, because dedication must be perpetual. Accepting, without establishing this requisite, the writer, after analogizing escheat and reversion, on the theory that escheat is a proprietary right, insists that dedications by tenants in fee under dependent tenure and by lessees for years do not bind the overlords and reversioners, and that these attempted dedications are, therefore, terminable and invalid. Indeed, to satisfy his test of perpetual duration, — in fact, to make

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[1] Dawes *v.* Hawkins, 8 C. B. (N. S.) 847, 856.